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IN THE

Supreme Court of the United States

October Term, 1967

No. 1095

JOHN J. GANNON, Individually and as President of INDEPENDENT WATCHMEN'S ASSOCIATION,

Petitioner,

—against—

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES-INDEPENDENT WATCHMEN'S ASSOCIATION, and on Behalf of All Members Similarly Situated,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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§411(a)(1) 2, 3, 4

§411(a)(2) 2, 3, 6, 7

28 U.S.C. 1254(1) 2

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States

Petitioner is John J. Gannon, individually and as president of Independent Watchmen's Association.

Respondent is Enrique Navarro, individually and as president of Local 2 of International Union of Police and Protection Employees-Independent Watchmen's Association, and on behalf of all members similarly situated.

Petitioner prays that a writ of certiorari issue to review a judgment and order of the United States Court of Appeals for the Second Circuit entered in the above entitled

proceeding on November 20, 1967 which order affirmed an order of the United States District Court for the Southern District of New York, granting the motion of respondent for a preliminary injunction under Section 102 of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 412, restraining defendants from interfering with meetings of respondent's local union.

Opinion Below

The opinion of the Court of Appeals, per Lumbard, Ch. J., is reported at —— F.2d —— and may be found in the appendix at page 1.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). The order of the Court of Appeals was entered on November 20, 1967, and may be found in the appendix at page 18.

Questions Presented

1. Whether the guaranty of the right in §101 (a) (1) and (2) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. 401 *et seq.* to meet, assemble and discuss matters properly before a union meeting justifies injunctive relief against threatened supervision of a local union's meeting by representatives of a parent labor organization short of imposing a trusteeship.

2. Should the Court decide the first question in the affirmative, may such injunctive relief be had when the issues are presented only in general terms, there is no factual development of any specific threatened danger to any right to vote or hold a meeting and the only specific evidence in

support of the application is a letter written to all local union members containing only reasoned discussion without threats of discipline.

Statute Involved

The statute involved is the Labor Management Reporting and Disclosure Act, 29 U.S.C. 401 et seq. particularly section 411 which appears in footnote 1 of the Opinion and may be found in the appendix at pages 2-3.

Statement

In a letter to the members of Local 2 dated February 9, 1967, petitioner indicated awareness of "problems which have existed within your local," referred to calls from rank and file members of the local and the International's desire to furnish information. The problems were stated to be the desire of some members to disaffiliate from the international, attempts to change the welfare insurer and the local's counsel. Provision was made for international officers to preside at the meeting. The letter concluded, "The International urges you to attend the Local 2 meeting called for February 19, 1967 and take proper steps to protect your interests."

Nowhere in the papers is there any statement that any particular matters were to be discussed or presented for action at the regular meeting of February 19, 1967. Nor do any threats by defendant of discipline or any other kind appear.

Article IX of the Constitution of the I.W.A. gave the international president "other and further powers in addition to those herein enumerated and shall perform such other and further duties as are usual to his office and as are

performed by the president in accordance with the practices of the I.W.A." Such practices are shown to have included taking action to have international officers preside at a local's meeting. This had been done during 1965 in Local 2.

A temporary restraining order was granted in the District Court on February 16, 1967 and a Court of Appeals judge refused to vacate such temporary restraining order on February 17, 1967. The meeting was held on February 19, 1967 without international officers in attendance and was presided over by local officers. The preliminary injunction was heard thereafter and granted after argument. The Court of Appeals affirmed granting of the preliminary injunction.

Reasons for Granting the Writ

1.

The Court of Appeals holding is "that the LMRDA secures the right of union members to meet without interference from the international union except where the parent organization acts in accordance with lawfully established procedures to institute a trusteeship over the local union." This holding, characterized by the Court of Appeals as "an important question under the Labor Management Reporting and Disclosure Act", creates a situation where a parent body is prohibited from acting toward its locals except in the most drastic manner. Persuasion and orderly discussion are apparently outlawed if exercised by a parent union. On the other hand the parent is encouraged to take action to prevent almost completely the exercise of almost any local autonomy.

This Court has held, *Calhoon* v. *Harvey*, 379 U.S. 134 (1964), that the 101 (a) (1) guarantees do not vest in mem-

bers any right to unrestricted nomination to union office. As glossed in the very court of which review is sought, *Calhoon* mandates that the Labor Management Reporting & Disclosure Act provides no jurisdiction for United States Court to interfere unduly in union affairs. Rights are given by the statute to union members, but these rights must be directly attacked to justify court interference. *Cf. Gurton* v. *Arons,* 339 F.2d 371 (2nd Cir. 1964); *Robins* v. *Rarbach,* 375 F. 2d 929 (2nd Cir. 1963); *Coleman* v. *Brotherhood of Railway and Steamship Clerks,* 340 F. 2d 206 (2nd Cir. 1965).

Judge Hays in *Gurton* expressed the proper construction of *Calhoun* when he said (339 F. 2d at 374-375):

> "But the guaranty of the equal right to vote is surely not a general commission for the federal courts to review the constitution and by-laws of the union. As long as no claim is made that provisions of the constitution and by-laws are being applied in such a way as to deny equality in voting, there is nothing in Section 101 which authorized consideration of those documents.
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> • • •
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> "The provisions of the L.M.R.D.A. were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions. Courts have no special expertise in the operation of unions which would justify a broad power to interfere. The internal operations of unions are to be left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act. The conviction of some judges that they are better able to administer a union's affairs than the elected officials is wholly without foundation. Most unions are honestly and efficiently administered

> and are much more likely to continue to be so if they are free from officious intermeddling by the courts. General supervision of unions by the courts would not contribute to the betterment of the unions or their members or to the cause of labor-management relations."

See also *Coleman* v. *Brotherhood of Railway and Steamship Clerks,* 340 F. 2d 206 at 208 (2nd Cir. 1965); *Yanity* v. *Benware,* 376 F. 2d 197 (2 CA April, 1967).

No matter is shown to have been before the local to be voted on so that the right to vote equally or otherwise could not have been interfered with. Nor did any action of defendant indicate even any desire to interfere with any member's right to vote. The members were urged only "to attend" and "take proper steps to protect your interests". The only action taken by defendant was to furnish information and to provide for an orderly discussion by having international officers preside in accord with past practice: Perhaps this action was beyond the specific powers granted in the union constitution (it was not specifically prohibited), but the observance of the union constitution was not before the Court, only specific rights granted by statute and not shown to have been infringed.

The legislative history of LMRDA as set forth in the opinion below gives very little help on whether the question of who shall preside at a local meeting is one of the rights protected. The Court below recognized that the right of assembly protected by the statute was chiefly concerned with the right to confer outside regular meetings rather than with conduct at meetings. The Court below admits that in applying section 101 (a) (2) guarantees to this case it acts without any express indication of congressional

intent. It must be added that it likewise acts without any clear language in the act to this effect.

The Second Circuit previously held in *Yanity, supra*, that the right to meet and assemble freely under section 101 (a) (2) of the Act does not create a right of the membership to have meetings called. In this case it has held that the statutory right "necessarily encompass the right to assemble, consult and decide matters of concern to the local union without the inhibiting presence and control of international officials." A local member thus has a right to a particular presiding officer at a meeting which he could not have ordered called.

The Second Circuit has held in *Tucker* v. *Shaw*, —— Fed. 2d —— (1967), that when rights of the local against its officers were in question, a clear conflict arose justifying the exclusion of local counsel from the meeting. A similar situation might well have been presented at the February 19th meeting and dispassionate, disinterested international officers presiding might have been preferable to local officers who possibly would come under attack if there were really free discussion.

In *Gurton, supra*, the Second Circuit upheld the action of the executive board in setting aside a vote taken at a meeting without finding any violation of a member's statutorily guaranteed rights.

These examples as contrasted with the present case show what fine lines must be drawn as to what is and what is not interference in union affairs by the courts. A much sounder rule would be to prohibit interference by the courts except when it is shown that the statutory right of a member is being directly interfered with and thus avoid the necessity of hair line distinctions.

2.

Running through the court's opinion are various pejorative characterizations of defendant's acts. It is stated, among other instances, that "the Local meeting is taken over by the International". (Appendix 11) Again "the officers of Local 2 may not be shunted aside" (Appendix 11). The "elected officers of the local" are contrasted to "hostile outsiders" (Appendix 12). The object of the proceeding is said to be that "that the members be free from inhibiting controls imposed on their meeting from without" (Appendix 14).

All these epithets, if correct, might justify court action. They seem inflated out of all proportion when the only action involved was the writing of a letter which sought merely to stimulate (rather than suppress) discussion. The court's misunderstanding of what took place is due to the fact that there is before it no proof of any act whatsoever on the part of defendant except the writing of a letter. The rest of the papers are made up only of conclusions without any evidentiary matter in support thereof.

The Court has this term in *Longshoremen* v. *Marine Trade Association,* 389 U.S. 64 (1967) reversed a decree of injunction as too vague to be understood. Certainly it should not permit an injunction enforceable by contempt to stand when it is based on merely conclusory language which does not set forth any specific act complained of, and into which language horrendous meanings may be read that quite possibly are not supportable.

CONCLUSION

For the reasons set forth above it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

WILFRED L. DAVIS
Counsel for Petitioner

APPENDIX

Opinion, Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 79—September Term, 1967.

(Argued October 9, 1967 Decided November 20, 1967.)

Docket No. 31444

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES — INDEPENDENT WATCHMEN'S ASSOCIATION, and on Behalf of All Members Similarly Situated,

Plaintiffs-Appellees,

—v.—

JOHN J. GANNON, Individually and as President of INDEPENDENT WATCHMEN'S ASSOCIATION,

Defendants-Appellants.

Before:

LUMBARD, *Chief Judge,*
SMITH and FEINBERG, *Circuit Judges.*

Appeal from order of the United States District Court for the Southern District of New York, Charles M. Metzner, *J.*, granting motion of plaintiffs for a preliminary injunction under Section 102 of the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. §412, restraining

defendants from interfering with meetings of plaintiff's local union.

Affirmed.

CHARLES P. AXELROD, New York, N. Y. (Robert M. Heller and Philip Pierce, Heller & Pierce, New York, N. Y., on the brief), *for plaintiffs-appellees.*

JEROME H. SHAPIRO, New York, N. Y. (Wilfred L. Davis and Joy M. Holz, New York, N. Y., on the brief), *for defendants-appellants.*

LUMBARD, *Chief Judge:*

This appeal raises an important question under the Labor Management Reporting and Disclosure Act, 29 U. S. C. §401 et seq.: whether the guaranty of the right in Section 101(a)(1) and (2)[1] of the Act to meet, assemble

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[1] 29 U. S. C. §411(a)(1):

"Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

29 U. S. C. §411(a)(2):

"Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,*

and discuss matters properly before a union meeting justifies injunctive relief against threatened supervision of a local union's meeting by representatives of a parent labor organization. We hold that the LMRDA secures the right of union members to meet without interference from the international union except where the parent organization acts in accordance with lawfully established procedures to institute a trusteeship over the local union. We therefore affirm the order of the Southern District which granted the motion of appellees for a preliminary injunction.

The plaintiff, Enrique Navarro, as an individual member and as President of Local 2 of the International Union of Police and Protection Employees—Independent Watchmen's Association, brought this action under Section 102 of the LMRDA, 29 U. S. C. §412[2] against the defendants, John J. Gannon, individually and as President of the Independent Watchmen's Association, an international union of which Local 2 is an affiliated local.

The plaintiff sought an injunction restraining the defendants from interfering with the meeting of Local 2

That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

[2] 29 U. S. C. §412:

"Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

scheduled for February 19, 1967 on the ground that such interference would be in violation of the LMRDA, the constitution of the I. W. A. and the bylaws of Local 2;[3] in particular, plaintiffs sought to restrain defendants from assuming control of the Local meeting, from barring Local counsel from the meeting, from interfering with the right of members to express views on matters properly before the meeting, and from interfering with the right to have Local officers preside over the meeting. Plaintiffs also sought a declaratory judgment that the threatened acts described in a letter of February 9, 1967 to the members of Local 2 violated the I. W. A. constitution, the bylaws of Local 2, the provisions of 29 U. S. C. §411, and the Constitution of the United States.

The letter of February 9, 1967 was signed by James J. McFaun, Secretary-Treasurer of the I. W. A. and was written at the direction of the defendant. In the letter to members of Local 2, defendant indicated an awareness of "problems which have existed in your Local," in particular the desire of some members to disaffiliate from the I. W. A., the action of the Local in replacing its counsel, the attempt made within the Local to change the insurance company responsible for administering the welfare program. The letter then announced that Gannon, the International president, had directed that the International vice-president attend and preside over the Local meeting, that the International secretary-treasurer and Sergeant-at-Arms assist him, and that no counsel be permitted to

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[3] Although an officer of the union, plaintiff may bring this action to protect his secured rights as an individual member. *Salzhandler v. Caputo*, 316 F. 2d 445 (2 Cir. 1963); *Grand Lodge v. King*, 335 F. 2d 340 (9 Cir. 1964), cert. denied 379 U. S. 920.

attend.[4] On February 17, 1967 Judge Motley issued an order temporarily restraining the I. W. A. from such interference. The next day, February 18, 1967, Judge Anderson denied the defendant's application to stay the order. After a hearing on March 14, Judge Metzner, in an order entered on May 3, 1967, granted the plaintiff's motion for a preliminary injunction and denied defendant's cross-motion to dismiss the action.

The order issued by Judge Metzner[5] enjoined the defendants from assuming control of any meetings of Local 2;

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[4] In the letter to the members of Local 2, defendants directed that:

"1. First Vice-President Kirby attend your next stated meeting called for February 19, 1967 and act as chairman of such meeting.

2. Secretary-Treasurer McFaun and Sergeant-at-Arms Mancina attend such meeting and assist Vice-President Kirby in conducting same.

3. Secretary-Treasurer McFaun be appointed to take true and exact minutes of such meeting.

4. No counsel be permitted to attend this meeting.

5. Only members of the Local in good standing on proper showing of dues books be permitted to participate in the meeting and that all other persons other than those members of Local 2 in good standing and the International Officers specified herein be excluded from participation in the conduct of such meeting."

[5] Defendants were enjoined from:

"1. Assuming control of any membership or Executive Board meetings of Local 2, International Union of Police and Protection Employees—Independent Watchmen's Association;

2. Attending any membership meetings of Local 2, or participating in the deliberation and voting upon the business of such meetings except as provided in the Constitution of the Independent Watchmen's Association and the By-Laws of Local 2, International Union of Police and Protection Employees—Independent Watchmen's Association;

from attending any meetings, or participating in them except as provided in the constitution of I. W. A. and the bylaws of Local 2; from interfering with the attendance of counsel at meetings of Local 2; from interfering with the right of Local 2 members to meet and assemble freely; from preventing the expression of views upon business properly before the meeting; from interfering with the right of officers of Local 2 to preside at meetings of their local union. We agree with Judge Metzner that the rights of the plaintiff, protected by federal law, were threatened by the defendants and we find that the injunction was a proper exercise of his discretion.

Defendants appeal from the preliminary injunction, contending first that no violation of any right secured by Section 101(a)(1) and (2) was shown to justify the order; and second, that the issue was mooted by the holding of the meeting on February 19 without interference, and that there was no showing of the likelihood of future interference.

Section 101(a)(1) guarantees in pertinent part the right of every member of a labor union "to attend membership meetings and to participate in the deliberations . . . of

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3. From interefering with the attendance of counsel for Plaintiffs at meetings at Local 2;

4. From directly or indirectly in violation of the Constitution of the Independent Watchmen's Association, By-Laws and Charter of Local 2 hindering or interfering with the right of plaintiff and all other members of Local 2 to meet and assemble freely with other members;

5. From preventing the expression at meetings of Local 2 views upon any business properly before the meeting;

6. From denying or interfering with the right of duly elected officers and officials of Local 2 to preside over the meetings of the aforesaid Local, all on the ground that such action by the defendants is and will be in violation of 29 U. S. C. 411-413 and 29 U. S. C. 529."

such meetings, subject to reasonable rules and regulations in such organization's constitution and by-laws." And Section 101(a)(2) secures the "right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, . . . upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings." To protect these rights, Section 102, 29 U. S. C. §412, provides that suit may be brought in the federal courts for appropriate relief.

As Local 2 is an affiliate of the I. W. A., its members are bound by the terms of the I. W. A. constitution.[6] Under Article XV, the International Executive Board is given power to discipline any local union or member who, after notice and hearing upon charges, is found guilty of "dishonesty, misconduct, or conduct detrimental to the welfare of the I. W. A., or of violating any provision of this Constitution." Under Article XVII, the International is given authority to establish a trusteeship over any local

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[6] An action may not be brought under Section 102 of the LMRDA to enforce provisions of the union constitution, *Yanity* v. *Benware*, 376 F. 2d 197 (2 Cir. 1967), and no provision of the International constitution can define or limit the rights conferred by Title II of the Act. *Johnson* v. *Nelson*, 325 F. 2d 646 (8 Cir. 1963). It is only when, as here, a claim is made that the constitution is being applied in such a way as to deprive the local members of their secured rights that the documents may be considered. *Gurton* v. *Arons*, 339 F. 2d 371, 374 (2 Cir. 1964). We refer to the constitution only to show that it provides procedures by which abuses in local unions may be controlled by the International, and to indicate that the defendants here chose not to follow those procedures, or even to allege such abuses, but instead sought to assume control of the local under their general supervisory authority. This they cannot do if assumption of control involves a deprivation of a right protected by the Act.

for the purpose of correcting corruption or malpractice, to assure that the local will carry out responsibilities as a bargaining representative, or under a bargaining agreement, to restore democratic procedures, or to otherwise carry out the purposes of the I. W. A. These specified purposes follow exactly the requirements for establishing trusteeships imposed by Title III of the LMRDA, 29 U. S. C. §§461 et seq. Article IX of the I. W. A. constitution gives the International President "other and further powers in addition to those herein enumerated and [he] shall perform such other and further duties as are usual to his office and as are performed by the president in accordance with the practices of the I. W. A." The defendant seeks to justify the supervision outlined in the letter of February 9, 1967 to plaintiffs, not on Article XVII governing trusteeships, nor on Article XV dealing with discipline of local unions and local members, but on the additional and unspecified powers granted to the International President by Article IX of the constitution.[7]

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[7] The asserted control in this case would seem to come within the definition of trusteeship in the Act. Section 3(h) defines trusteeship to mean any "method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution and bylaws." 29 U. S. C. §402(h). In Title III of the Act, imposition of trusteeship is subjected to regulations specifying the purposes for which it may be imposed and providing a civil action for enforcement of the requirements. See Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609, 635-44 (1959) outlining the case for federal legislation regulating trusteeships. Professor Cox played a critical role in the process of drafting legislation, and his suggestions were followed closely in the statute as enacted. See Anderson, Landrum-Griffin and the Trusteeship Imbroglio, 71 Yale L. J. 1460, 1498-1500 (1962); Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 851, 898-902 (1960). We need not decide whether the defendants' action was a lawful trusteeship

The question before us is whether the rights guaranteed by Section 101 of the LMRDA include the right of local members to run the affairs of their union without interference from the international union with which they are affiliated. This question was apparently not considered in the congressional debates leading to passage of the Bill of Rights in the LMRDA.[8] That the legislative history of these provisions of the Act includes no mention of circumstances such as those which give rise to this case does not compel the conclusion that no protection was intended by the Congress. The Bill of Rights that appears as Title I of the Act was hastily drafted and included without much debate. The debate on the guaranty of a right of assembly in Section 101(a)(2) was chiefly concerned with enabling members to confer outside regular meetings for the purpose of discussing union affairs without fear of reprisal

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under its constitution and the Act; nor should we speculate on the reasons behind the plaintiff's decision to bring the suit under Section 102 rather than Section 304. In *Schonfeld* v. *Raftery*, —— F. 2d —— (Aug. 10, 1967), this court upheld an injunction granted under Section 304 to terminate an unlawful trusteeship. In *Flaherty* v. *McDonald*, 183 F. Supp. 300 (S. D. Calif. 1960), it was held that Section 101(a)(1) did not create a right to challenge removal of local officers by an international union acting under the authority of an allegedly improper trusteeship.

[8] The Bill of Rights was originally introduced as an amendment on the Senate floor by Senator McClellan which was revised three days after its passage in an amendment introduced by Senator Kuchel, which was embodied without relevant change in the Landrum-Griffin bill in the House. That bill was adopted in committee and under the prevailing rule could not be amended on the floor. See, e.g., Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 831-42 (1960); Rothman, Legislative History of the "Bill of Rights" for Union Members, 45 Minn. L. Rev. 199 (1960). The legislative history of the Bill of Rights is reproduced at 2 Legislative History of the Labor Management Reporting and Disclosure Act of 1959, 1102-1119, 1220-1239.

by union officials. 105 Cong. Rec. 5812 (daily ed. April 22, 1959) (remarks of Sen. McClellan); see 105 Cong. Rec. 14,336 (daily ed. August 12, 1959) (remarks of Rep. Derwinski). To make this clear, a semi-colon was inserted separating the clause dealing with rights of speech and assembly at such rump sessions from the provisions for freedom of speech at regular meetings, on which we rely here, see 105 Cong. Rec. 6021 (daily ed. April 25, 1959).

Without any express indication of congressional intent, we must determine whether Section 101(a)(2) guarantees a right to meet without interference from the international union by considering the broad purposes of the Bill of Rights. This we have done, and the conclusion that such a right is comprehended by the law seems inescapble. We hold that the guaranty in Section 101(a)(1) of the equal right to participate in the deliberations and voting at union meetings, and the guaranty in Section 101(a)(2) of the right to express views upon business before the meeting necessarily encompass the right to assemble, consult and decide matters of concern to the local union without the inhibiting presence and control by international officials.

The LMRDA was enacted with the clear purpose of assuring "the full and active participation by the rank and file in the affairs of the union." *American Federation of Musicians* v. *Wittstein,* 379 U. S. 171, 182-83 (1964). The Congress by passing a "Bill of Rights" for union members determined that the efficiency of a monolithic union under autocratic rule was gained at too great a price if it necessitated any sacrifice in the members' rights to determine the course of their organization. The balance was struck in favor of union democracy. Only a union

responsive to the rights of all its members can achieve the ideals of responsibility, opportunity and self-determination that are recognized as fundamental values in the labor movement.

To effectuate that determination, the Bill of Rights was incorporated into the Act, guaranteeing each union member protection against infringement of his rights to vote, to meet, and to participate in discussions on matters of concern to him and his union. These rights are protected against incursion or subversion by the individual's own representatives, the officers of his union. Thus, the individual member cannot be disciplined for criticizing or even defaming those officers, *Salzhandler* v. *Caputo,* 316 F. 2d 445 (2 Cir. 1963), and the official of a local union will not be permitted to retaliate against members who attend meetings to consider affiliation with an international union. *Johnson* v. *Local Union No. 58, International Brotherhood of Electrical Workers,* 181 F. Supp. 734 (D. C. Mich. 1960). These rights should be similarly protected against invasion from without the local, for the guarantees carefully enforced against officers of the local would amount to nothing if they could be enjoyed only by the grace of the International.

There can be little doubt that these secured rights of speech and assembly would be compromised if the Local meeting is taken over by the International. The right of assembly must include the right to meet under the supervision of the representatives chosen for that purpose. That is the cornerstone of democratic rule—that the government is freely chosen by the governed. And the representatives, the officers of Local 2, may not be shunted aside without gravely endangering the individual rights of the members.

In attempting to assume control of the meeting of Local 2, the International Union purported to act in order to ensure the rights of local members—but we see in the record before us no indication that any interest of the Local membership was being abused by their chosen representatives. And if the Local officers show insufficient respect to the views of the rank and file, there exist remedies for such infringement within the union organization and by access to the courts. But the defendants have pointedly chosen not to establish a trusteeship according to the procedures set out in Article XVII of the Constitution and Title III of the LMRDA, and in the absence of such recourse, the autonomy of the local union should be our primary concern.

The international union concededly acted to restrain a recalcitrant local from leaving the fold—but the guaranty of self-determination contained in Title I of the Act protects the Local members against such unwanted beneficence. The fundamental requirement of union democracy is that decisions are made according to the expressed desires of those affected; and this requirement is met only where there is full freedom to criticize, to dissent, and to oppose. The best guaranty of this freedom is that the Local meeting be run by the elected officers of the Local; to have hostile outsiders attempt to manage the meeting, determine who may attend, and who is to be recognized is the surest way to stifle and destroy the very rights which the Act seeks to protect.

The principle of union democracy encompasses, as Clyde Summers has said, "the right to choose, even unwisely, [for] self-government is self-fulfillment."[9] We need not

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[9] Summers, Democracy in Trade Unions, The New Leader, Feb. 10, 1958, p. 7.

dispute the contention of defendant Gannon that "it is greatly to the advantage of each and every guard to belong to a Union, which is as large as possible so that we will have greater bargaining power and greater financial stability." Union autocracy may indeed be more effective in mobilizing the collective power of workers to gain greater material benefits. But Congress determined that the aims of labor organizations were broader, that the ideals of responsibility and self-determination must be weighed with the goal of economic security, and that union democracy was so important to those ideals that it should be protected as a matter of national policy. Professor Cox has said:

> "The law cannot create the spirit of self-government. It cannot compel union members to attend meetings or hold their officers to strict accounting. It cannot compel members to see in labor unions something more than service organizations hired to obtain benefits in return for dues. The most the law can do is to secure the opportunity for workers who wish to take an active part in democratic unions without undue loss of personal freedom." [10]

In electing a new slate of officers in 1965, in asking whether the present insurance company was administering the welfare program successfully, and even in asking whether their particular interests were best served by affiliation with I. W. A., the members of Local 2 were exercising their rights of self-government. Their activity and spirit might be an embarrassment to the I. W. A.;

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[10] Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609, 644 (1959).

a uniform stance rather than the independence and controversy guiding Local 2 might be preferable to the International. But in Title I, the legislature indicated its preference in union government no less than in political government for the tumult of democracy rather than the order of imposed authority. In particular, Section 101 (a)(2) ensured the right of every member to "express at meetings of the labor organization his views upon . . . any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings." We think it essential to the effectiveness of this guaranty, and implicit therein, that the members be free from inhibiting controls imposed on their meetings from without. The Local has the authority to impose reasonable rules to maintain the order and decorum needed to dispose of the business of the meeting, but that proviso gives no authority for a take-over by the parent organization.

Nor is our conclusion in conflict with other decisions of this court and of the Supreme Court denying relief under Section 102 of the Act. It should be noted that the bounds of guarantees of the Bill of Rights in Title I as determined by the courts are still, some eight years after its enactment, in the early stages of development. In *Calhoon* v. *Harvey*, 379 U. S. 134 (1964), the Supreme Court held that the specific requirements in Title IV, Section 401(2) governing eligibility for office precluded an inference of similar rights in Section 101(a)(1), and that therefore a bylaw requiring that members nominate only themselves for office could not be attacked as a violation of the guarantees of equal voting rights in Section 101(a)(1). Justice Black clearly implied that the voting rights protected by

Section 101(a)(1) must be directly attacked to warrant suit under Section 102. This court was guided by that implication in finding that the right to equality in voting was not violated by the action of the executive board of the union arbitrarily voiding the result of a vote after it is taken. *Gurton* v. *Arons,* 339 F. 2d 371 (1964). But here we rely not on the threat from the International to the voting rights of Local 2 although it would seem that there exists justification for finding that these rights would be attacked, whether directly or indirectly, if the International were permitted to take over the meeting. Here we deal instead with a threatened invasion of the members' right of free discussion, and we find that guaranty encompasses the right to meet under the direction of their own officers untrammelled by outsiders who by their own admission are dissatisfied with the course of action freely taken by the local.

That position is not at odds with the opinion of this court in *Yanity* v. *Benware,* 376 F. 2d 197 (1967). In that case, this court held that the right to meet and assemble freely in Section 101(a)(2) of the Act does not create a right to call meetings of the membership, but rather insures the right to assemble outside regular meetings without fear of reprisal from the union. Thus, it was found that the failure of the union officers to convene a special meeting as they were required to do by their bylaws was not a violation of Section 101(a)(2) and did not justify an action under Section 102. But here we rely not on the meet and assemble clause of the Act, but on the right of discussion at regular meetings which have been called. The majority in *Yanity* explicitly avoided any examination of the scope of this right because the connection between the alleged violation and the injury suffered was too speculative

and remote: "We need not decide the extent to which this provision creates a federal right to bring any appropriate business before a union meeting and have a vote upon it." 346 F. 2d at 200. In this case we decide only that Section 101(a)(2) does create a federal right to discuss matters before a union meeting without the inhibiting presence and supervision of International officers. We need not resolve whether that includes the right to discuss any particular matter, since it seems clear to us that free discussion is impossible if the forum is under the control of superior force, with foreigners patrolling the meeting chamber and exercising the prerogatives of the chair.

The appellant contends that no injunction should issue because there has been no actual interference with the rights of free discussion or assembly. But surely we need not wait until the meeting is held and the members have been suppressed in the exercise of their statutory rights. The potential for suppression of views, indeed the purpose to interfere in the affairs of the local is clear from the defendants' letter, and we know from political experience that once suppressed, the democratic spirit may not soon be revived in Local 2.

Appellant argues, too, that the issue is moot since the letter referred only to the meeting scheduled for February 19, 1967, and that meeting has passed without incident. But the likelihood of interference remains; we have no assurance that the same instinct for control over the activities of Local 2 will not govern the I. W. A. in the immediate future. Injunctive relief is proper when "cessation of illegal conduct did not diminish the risk of future similar conduct." *Lanigan* v. *Local 9, International Brotherhood of Electrical Workers,* 327 F. 2d 627 (7 Cir.), cert. denied,

377 U. S. 979 (1964). See *Walling* v. *Helmerich & Payne*, 323 U. S. 37, 43 (1944); *Local 74, United Brotherhood of Carpenters and Joiners* v. *N. L. R. B.*, 341 U. S. 707 (1951). The district judge acted well within his discretion in granting the injunction.

The order of the district court is, accordingly, affirmed.

Judgment and Order, Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twentieth day of November one thousand nine hundred and sixty-seven.

Present:

HON. J. EDWARD LUMBARD,
Chief Judge,

HON. J. JOSEPH SMITH,
HON. WILFRED FEINBERG,
Circuit Judges.

ENRIQUE NAVARRO, as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES—INDEPENDENT WATCHMEN'S ASSOCIATION, and on Behalf of All Members Similarly Situated,

Plaintiff-Appellee,

—v.—

JOHN J. GANNON, Individually and as President of the INDEPENDENT WATCHMEN'S ASSOCIATION,

Defendants-Appellants.

Appeal from the United States District Court for the Southern District of New York.

Judgment and Order, Court of Appeals

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

A. Daniel Fusaro
Clerk

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1095

JOHN J. GANNON, Individually and as PRESIDENT OF INDEPENDENT WATCHMEN'S ASSOCIATION,

Petitioner,

—against—

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES-INDEPENDENT WATCHMEN'S ASSOCIATION, and on behalf of ALL MEMBERS SIMILARLY SITUATED,

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION

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CHARLES P. AXELROD,
ROBERT M. HELLER,
On the Brief.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1095

JOHN J. GANNON, Individually and as PRESIDENT OF INDEPENDENT WATCHMEN'S ASSOCIATION,

Petitioner,

—against—

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES-INDEPENDENT WATCHMEN'S ASSOCIATION, and on behalf of ALL MEMBERS SIMILARLY SITUATED,

Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION

Reported Opinions of the Courts Below

The opinion of the United States Court of Appeals for the Second Circuit, Per Lumbard, Ch. J., is reported at 385 F. 2d 512 (A. 1). The opinion of the United States District Court for the Southern District of New York, Per Metzner, J., is reported at 266 F. Supp. 601 (not appended by petitioner but contained in the record at pp. 111-122).

Question Presented

1. Did the directive of petitioner infringe or threaten to infringe upon the federally protected rights of the individual members of Local 2, as those rights are secured by Sections 101(A)(1) and (2) of the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U. S. C. 401 et seq., so as to thereby justify the issuance of a preliminary injunction pursuant to Section 102 of the Act, 29 U. S. C. 412, and Rule 65 of the Federal Rules of Civil Procedure?

A. Where a parent union, without the benefit of authority of a federal statute or of its own constitution (and actually, contra to the express provisions of its own constitution), directs:

i. that a regular membership meeting of one of its affiliate locals be completely taken over by international officers, which officers have no right to be even present at a local meeting; and further

ii. that the meeting be conducted by said officers to the exclusion of the local officials duly elected by the membership;

iii. and bars the attendance at such meeting by the local's legal counsel,

is there a violation or threatened violation of the rights of the individual members of the local union to meet, assemble and discuss matters before the union meeting as provided for in Sections 101(A)(1) and (2) of the Act, 29 U. S. C. 411(A)(1) and (2)?

B. Does the guaranty of the rights contained in Sections 101(A)(1) and (2) of the Act to meet, assemble and discuss matters properly before a union meeting encompass therein:

i. the right of the individual members of the local to conduct the affairs of their union without undue interference from the international union with which they are affiliated; and

ii. to meet at regular local meetings under the supervision of local officials chosen by the membership for the purpose;

iii. without the presence and control of international officers who have no right to impose their presence at a local meeting?

Statement of the Case*

(A) The Petition for Review

Petitioner seeks a writ of certiorari to review a judgment and order of the United States Court of Appeals for the Second Circuit (A. 18) unanimously affirming an order of the United States District Court for the Southern District of New York, said latter order granting respondent's motion for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure and Section 102 of the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. 412, and preliminarily enjoining petitioner from interfering with meetings of the respondent's local union (R. 129-132).

* Unless otherwise indicated, all references are to the record on file in this Court.

Specifically, the said order of the District Court enjoined petitioner, during the pendency of the action, from doing the following acts, which he had, as President of Independent Watchmen's Association, undertaken to do:

1) Assuming control of any membership or executive board meetings of Local 2, International Union of Police and Protection Employees-Independent Watchmen's Association;

2) Attending any membership meetings of Local 2, or participating in the deliberation and voting upon the business of such meetings except as provided for in the constitution of the Independent Watchmen's Association and By-Laws of Local 2, International Union of Police and Protection Employees-Independent Watchmen's Association;

3) Interfering with the attendance of Local 2 counsel at meetings of Local 2;

4) Directly or indirectly, in violation of the constitution of the Independent Watchmen's Association, By-Laws and Charter of Local 2, hindering or interfering with the right of respondent and all other members of Local 2 to freely meet and assemble with other members;

5) Preventing the expression at meetings of Local 2, of views upon any business properly before the meeting; and

6) From denying or interfering with the right of any elected officer and officials of Local 2 to preside over the meetings of the aforesaid Local (R. 131).

The preliminary injunction was issued pursuant to 29 U. S. C. 412 (*infra,* fn. 1) upon the ground that certain conduct and activity previously undertaken by the petitioner would, if allowed to continue, deprive the members

of Local 2 of their rights within said labor organization as guaranteed them by 29 U. S. C. 411(A)(1) and (2) (*infra,* fn. 2) (R. 130).

(B) Jurisdiction in the Court of Original Instance

This action, which seeks a permanent injunction and declaratory judgment (R. 73), was instituted in the United States District Court for the Southern District of New York under the express authority contained in Section 102 of the Labor Management Reporting and Disclosure Act of 1959, 29 U. S. C. 412[1] and seeks protection against infringement and threatened infringement of rights secured by Sections 101(A)(1) and (2) of the Act, 29 U. S. C. 411(A)(1) and (2)[2] (R. 115).

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[1] 29 U. S. C. 412:

"Civil Action for Infringement of Rights; Jurisdiction—

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

[2] 29 U. S. C. 411(A)(1):

"(A)(1) Equal Rights—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

29 U. S. C. 411(A)(2):

"(A)(2) Freedom of Speech and Assembly—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any

(C) The Case as Presented to the Courts Below

The action was brought by Enrique Navarro, as an individual member, and as President of Local 2, International Union of Police and Protection Employees-Independent Watchmen's Association, and on behalf of all members similarly situated (R. 68). Relief is sought as against John J. Gannon individually and as President of Independent Watchmen's Association (R. 68).

Local 2 is an affiliate local of the Independent Watchmen's Association and as such holds a charter from and operates pursuant to the constitution of the Independent Watchmen's Association and the By-Laws of Local 2 (approved by the Independent Watchmen's Association) (R. 17, 54, 68, 72).

The conduct of the petitioner which necessitated the within action takes the form of a letter (Ex. 1 to amended complaint, R. 76-77) which was self-termed a "directive", and which emanated from petitioner Gannon as International President of Independent Watchmen's Association. Said "directive" issued over the signature of the International Secretary-Treasurer, and was sent to each and every member of Local 2 (R. 18, 56, 114). And by such "directive" petitioner orders that:

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views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates, in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations."

"1. First Vice-President Kirby attend your next stated meeting called for February 19, 1967 and act as Chairman of such meeting.

2. Secretary-Treasurer McFaun and Sergeant-At-Arms Mancina attend such meeting and assist Vice-President Kirby in conducting same.

3. Secretary-Treasurer McFaun be appointed to take true and exact minutes of such meeting.

4. No counsel be permitted to attend this meeting.

5. Only members of the local in good standing on proper showing of dues books be permitted to participate in the meeting and that all other persons other than those members of Local 2 in good standing and the international officers specified herein be excluded from participation in the conduct of such meeting" (R. 76-77).

This "directive" was preceded by an expression of displeasure over the fact that some of the members of the local allegedly desired to disaffiliate from the international; that the local had replaced its former legal counsel (*who was and still is counsel for petitioner*); and that attempts had been made within the local to change the insurance company responsible for administering the welfare program. In short, a complete "take over" was attempted.

The above is what petitioner characterizes as "only a reasoned discussion without threats of discipline" (Petition, pp. 2-3) meant to "merely stimulate (rather than suppress) discussion" (Petition, p. 8) and as constituting action undertaken by petitioner solely "to furnish information and to provide for an orderly discussion" (Petition, p. 6).

The petitioner's wanton disregard for the rights of the members of Local 2 is underscored when that which petitioner attempted to do under claim of right is viewed against the guarantees contained in Sections 101(A)(1) and (2) of the Act (29 U. S. C. 411(A)(1) and (2)), the petitioner's own Constitution and the By-Laws of Local 2. Parenthetically, it will be noted that the claim of the respondent in the courts below has consistently been that that which petitioner threatened and attempted to do with reference to the meetings of respondent's local union constituted a direct attack upon and threatened infringement of the rights of the individual members of Local 2 as those rights are secured by Sections 101(A)(1) and (A)(2) of the Act; was in direct contravention of the Constitution of the I. W. A. and By-Laws of Local 2; and insofar as the petitioner seeks to justify the action taken on the basis of Article IX of the I. W. A. Constitution (Ex. 2 to amended complaint, p. 9 thereof, R. 78, p. 9) as being an exercise of the inherent supervisory power of the international over the local, is an attempted application of the Constitution and By-Laws in a manner which would deprive the members of Local 2 of statutory rights.

Article IX, Section 1 of the I. W. A. Constitution (Exhibit 2 to amended complaint, R. 78, p. 8) as same refers to the powers and duties of international officers specifically states that the international president shall have the power to attend local meetings. Article V of the By-Laws of Local 2 (Ex. 3 to amended complaint, R. 79, p. 3) which was approved by the I. W. A. specifically states that the local's president shall preside at all local meetings. This is reaffirmed in Article XI of the I. W. A. Constitution (R. 78, p. 13), that absent a contrary By-Law provision, the local's president shall preside at all local meetings.

With reference to the international's secretary-treasurer, Article IX, Section 3 of the I. W. A. Constitution (R. 78, p. 10) vests said officer with the power to record meetings of conventions and international executive board meetings, the recording of *local* meetings being reserved to the local's recording secretary in Article V of the Local 2 By-Laws (R. 79, p. 3). Likewise, Article IX, Section 3 of the I. W. A. Constitution (R. 78, p. 12) only allows the international sergeant-at-arms to assist the international president in maintaining order at meetings over which the international president presides.

It is within the foregoing factual setting that respondent was forced to institute action in the District Court, seeking, inter alia, an injunction restraining petitioner from interfering with the meetings of Local 2 on the ground that such interference would be in violation of the LMRDA, and in particular restraining petitioner from assuming control of the local meeting, from barring attendance of local counsel, from interfering with the right of the members to express views on matters before the meeting, and from interfering with the right of the members to have duly elected local officers preside over their meeting.

The exigencies of the circumstances necessitated the use of an order to show cause (R. 13-15) which was signed by the Hon. Constance Baker Motley at 4:00 P.M. on February 17, 1967.[3] The aforesaid order to show cause contained a temporary restraining order, the terms of which were similar to the preliminary injunction ultimately issued.[4]

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[3] Order to show cause actually signed February 17, 1967, but inadvertently dated February 16, 1967.

[4] The parties appeared before Circuit Judge Anderson on Saturday, February 18, 1967, upon petitioner's application to stay the restraining order of Judge Motley; said application being denied (R. 112).

After a hearing on March 14, 1967, District Judge Metzner, in an order entered on May 3, 1967, granted the motion for a preliminary injunction. Thereafter, and on November 20, 1967, after petitioner had taken an appeal to the United States Court of Appeals for the Second Circuit, a judgment and order was entered in said Court, unanimously affirming the order of the District Court (A. 18).

(D) The Findings of the Courts Below

In the District Court, Judge Metzner found, among other things, that the directive of petitioner and the action therein threatened was on its face violative of 29 U. S. C. 411 (A)(1) and (2), and granted the motion accordingly (R. 120).

Implicit in this finding is the further finding that where a parent union (petitioner), without authority of federal statute or of its own Constitution (and indeed in direct contravention of the express provisions of its own Constitution), directs that a regular meeting of one of its affiliate locals be taken over by international officers, which officers had no right, as such, even to be present at such meeting; and that the meeting be conducted by said officers to the exclusion of the local officials duly elected by the membership; and that legal counsel of the local be excluded, such threatened conduct necessarily constitutes an infringement upon the federally protected rights of the members of the local to meet and assemble freely, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meeting.

The Second Circuit, in an exhaustive opinion (A. 1-17), agreed with Judge Metzner that "the rights of the plaintiff, protected by federal law, were threatened by the defen-

dants" and found "that the injunction was a proper exercise of his discretion" (A. 6).

To set the issues in their proper perspective, the Circuit Court, after reviewing the I. W. A. Constitution and applicable federal law concerning the suspension of local union autonomy (A. 7-8), found that Article XV of the I. W. A. Constitution provided appropriate procedures for disciplining any member or local, and that Article XVII provided for the institution of trusteeships which followed the requirements contained in Title III of the LMRDA, 29 U. S. C. 461 et seq. (A. 7-8). The foregoing was pointed out to show, in the words of the Court "[that] the Constitution * * * provides procedures by which abuses in local unions may be controlled by the international, and to indicate that the defendants here chose not to follow those procedures, or even allege such abuses, but instead sought to assume control of the local under their general supervisory authority. This they cannot do if assumption of control involves a deprivation of a right protected by the Act" (A. 7, fn. 6). In this connection it will be noted that petitioner, as urged below, seeks to justify the threatened supervision solely on the basis of Article IX of the I. W. A. Constitution which is a catch-all provision giving the petitioner unspecified "other and further powers" (Petition, p. 3).

The Circuit Court dealt with the question of the right to meet at regular meetings and participation therein (A. 10) and specifically held that "the guaranty in Section 101(A)(1) of the equal right to participate in the deliberations and voting at union meetings, and the guaranty in Section 101(A)(2) of the right to express views upon business before the meeting necessarily encompass the right

to assemble, consult and decide matters of concern to the local union without the inhibiting presence and control by international officials" (A. 10).

The Court found that the secured rights of speech and assembly would be compromised if the local meeting in these circumstances would be taken over by the international, as the right to assemble must include the right to meet under the supervision of the representatives chosen for that purpose (A. 11). The Court went on to say that "the best guaranty of this freedom [to criticize, dissent and oppose] is that the local meeting be run by the elected officers of the local; to have hostile outsiders attempt to manage the meeting, determine who may attend, and who is to be recognized is the surest way to stifle and destroy the very rights which the Act seeks to protect" (A. 12).

Petitioner presses in this Court that there was no "threatened danger to any right to vote" (Petition, pp. 2 and 6). This argument is at once irrelevant, and incorrect. The Court below held that before it was a threatened invasion of the members' right to free discussion, which encompassed the right to meet under the supervision of the members' own duly elected officers, uninhibited by the overbearing presence of outsiders who were, by their own admission dissatisfied with the members' previous course of free discussion (A. 15). In this connection it was found that free discussion would be impossible if the forum were to be under control of a superior force, with "foreigners" patrolling the meeting chamber and exercising the prerogatives of the chair (A. 16).

Reasons for Denying the Writ

I.

The decision below is clearly correct and is not in conflict with decisions of Courts of Appeals of the other Circuits or of this Court; nor is there presented an important question of federal law which has not been, but should be settled by this Court.

Petitioner urges that the opinion of the Court of Appeals creates a situation where "persuasion and orderly discussion are apparently outlawed if exercised by a parent union" (Petition, p. 4). This contention must be examined against the entire background of this case and in particular in the light of what petitioner attempted to do. At issue here are basic and essential federally guaranteed rights of union members. "Persuasion" and "orderly discussion" by a parent union are not outlawed *so long as the parent acts in a manner which does not deprive the members of an affiliate local of their statutory rights.* In the case at bar, petitioner had undertaken a course of "persuasion" and "orderly discussion" by seeking to assume complete control over a local meeting, thus to create a captive audience to listen to what petitioner had to say. Petitioner would seek to "persuade" the members of the local by suspending their system of self-government and by a brazen show of authority force the members in lawful attendance to meet with outsiders, not even members of the local, who had no right to set foot in the meeting chamber save by invitation. Petitioner urges that the directive was meant to "merely stimulate (rather than suppress) discussion" (Petition, p. 8). One is hard put to see how such directive

could result in anything short of the *stifling* of free discussion by the membership. As the Court of Appeals aptly put it "it seems clear to us that free discussion is impossible if the forum is under the control of superior force, with foreigners patrolling the meeting chamber and exercising the prerogatives of the chair" (A. 16). It seems quite clear that "persuasion and orderly discussion" as visualized by petitioner, are synonymous with intimidation and disregard for the rights of the members of Local 2.

Accordingly the members of Local 2 sought protection against infringement and threatened infringement of their rights as guaranteed them in Sections 101(A)(1) and (2) of the Act, 29 U. S. C. 411(A)(1) and (2). If, in the circumstances of this case, protection of those federal rights will have the ancillary effect of preventing petitioner from embarking upon his peculiar style of "persuasion and orderly discussion", then that must unavoidably be. No policy determination or directive from any international office or any provision contained in an international constitution can define, limit or otherwise infringe upon the rights which respondent seeks to have protected. *Johnson* v. *Nelson,* 325 F. 2d 646, 653 (8th Cir. 1963).

When as here, it is found that statutory rights of a union member are being violated or are threatened with violation (even by a parent union), a duty is cast upon our federal courts to insure that the federal rights of that union member are preserved and protected. Indeed, the Court in *Calhoon* v. *Harvey,* 379 U. S. 134 (1964), recognized this principle in holding that a direct attack on statutory rights would justify court interference.

Petitioner places great emphasis upon *Gurton* v. *Arons,* 339 F. 2d 371 (2nd Cir. 1964), in arguing that only in the

most extreme cases where rights under the LMRDA are under direct attack will Court interference be justified. The fact remains that *Gurton* and *Calhoon* stand for the proposition that so long as there is an attack upon these federal rights our federal courts may act. In *Gurton* the Court stated at p. 375 that "so long as the union * * * violates no provision of law, we judges should resolutely keep hands off". Implicit in this statement is the holding that where there is a violation of the LMRDA there is a duty upon the court to intervene. Chief Judge Lumbard, who wrote the opinion for the Court below recognized the role of the federal courts in cases of this sort when, in writing a concurring opinion in *Gurton*, he stated at pp. 375-376, that the role of the Court was to insure that "choice is made in a manner which does not violate the rights of members under Section 101(A)(1)". As will be seen herein, rights provided for and secured by 29 U. S. C. 411(A)(1) and (2) came under direct attack by petitioner when he issued his directive, and the resulting injunction was properly issued and properly upheld.

As previously noted, the conduct of the petitioner which has resulted in the case at bar takes the form of a letter (Ex. 1 to amended complaint, R. 76-77) which was self-termed a "directive" and which emanated from petitioner Gannon as International President of the Independent Watchmen's Association over the signature of the International Secretary-Treasurer. This directive was sent to each and every member of Local 2 (R. 18, 56, 114) and stated that petitioner *directed* that the international officers assume control over the conduct of a previously scheduled local meeting (R. 77). Also directed was the exclusion of the duly appointed legal counsel of Local 2, and all

persons other than paid up members and international officers. This action was attempted under the guise of the inherent supervisory power of the international over the local, and as being purportedly authorized by Article IX of the I. W. A. Constitution which grants to the International President additional but unspecified powers (R. 57, Petition, pp. 3-4).

Article IX, Section 1 of the I. W. A. Constitution (R. 78, p. 8) as same refers to the powers and duties of international officers specifically states that the International President shall have power to *attend* local meetings. Nowhere in Article IX is the power given to any international officer to attend meetings *other than the International President.* Indeed, the power of the International President to attend meetings means only that he is authorized to be physically present—no authority is conferred upon him or to any other person in the I. W. A. to preside over a meeting of Local 2. In this connection it will be noted that Article XI of the I. W. A. Constitution (R. 78, p. 13) specifically states that in the absence of a contrary By-Law provision the local's President shall preside over local meetings, and Article V of the By-Laws expressly provides that the local's President shall preside at *all* local meetings (R. 79, p. 3). With reference to the International Secretary-Treasurer, Article IX, Section 3 of the I. W. A. Constitution (R. 78, p. 10) vests said officer with the power to record meetings of conventions and International Executive Board meetings, the recording of local meetings being specifically reserved to the local recording secretary per Article V of the By-Laws (R. 79, p. 3). Likewise, Article X, Section 4 of the I. W. A. Constitution (R. 78, p. 12) only allows the International Sergeant-At-Arms to assist the

International President in maintaining order, presumably at meetings over which the International President presides.

The Constitution of the I. W. A. and By-Laws of Local 2 were properly before the Court below for review in determining whether or not the preliminary injunction was correctly issued. This is particularly so in view of the contention of petitioner that what was sought to be done was consistent with Article IX of the I. W. A. Constitution (R. 78, p. 9) as being an exercise of the inherent supervisory power of the International over Local 2 (R. 57, Petition, pp. 3-4).

Where the claim is that the Constitution and By-Laws are being applied so as to deprive persons of rights under 29 U. S. C. 411, the aforesaid documents may be considered. *Gurton* v. *Arons,* 339 F. 2d 371 (2nd Cir. 1964); *United Brotherhood of Carpenters and Joiners of America* v. *Brown,* 343 F. 2d 872 (10th Cir. 1965); *Null* v. *Carpenters Dist. Council of Houston,* 239 F. Supp. 809 (D. C. S. D. Texas 1965). Indeed, this Court in *Calhoon* v. *Harvey,* 379 U. S. 134 (1964) examined the Constitution and By-Laws of the union in that case in determining whether or not a violation under the LMRDA had occurred.

In *Gurton* the Court said at p. 374, that "as long as no claim is made that provisions of the Constitution and By-Laws are being applied in such a way as to deny equality in voting, there is nothing in Section 101 which authorized consideration of those documents." The case at bar is the converse of *Gurton* in that here such a claim was made, to wit: that when petitioner sought to justify his "directive" upon Article IX of the I. W. A. Constitution, there was an attempted application of the Constitution and By-Laws

in a manner which would deprive the members of Local 2 of their rights to meet, assemble, etc. as provided for in Title I of the Act. The Court of Appeals took pains to point out that "we refer to the Constitution only to show that it provides procedures by which abuses in local unions may be controlled by the international, and to indicate that the defendants here chose not to follow those procedures, or even to allege such abuses, but instead sought to assume control of the local under their general supervisory authority. *This they cannot do if assumption of control involves a deprivation of a right protected by the Act*" (A. 7, fn. 6; A. 8). (Emphasis supplied.)

Petitioner argues that no rights of respondent as provided by Title I of the Act were violated or were threatened with violation by his directive (Petition, p. 6). Section 101(A)(1), 29 U. S. C. 411(A)(1) guarantees in pertinent part the right of every member of a labor union "to attend membership meetings and to participate in the deliberations of such meetings, subject to reasonable rules and regulations in such organization's Constitution and By-Laws." Section 101(A)(2), 29 U. S. C. 411(A)(2) secures the "right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views * * * upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings."

The foregoing "Bill of Rights" provisions were included in the Act to protect and foster participation by the rank and file in the affairs of the union. *American Federation of Musicians* v. *Wittstein*, 379 U. S. 171, 182-183 (1964). The foregoing was described by this Court at p. 182 as "the

pervading premise" of the Act. The rights provided in and secured by the Act have been interpreted to insure free and untrammeled discussion and to strengthen internal union democracy. *Salzhandler* v. *Caputo,* 316 F. 2d 445 (2nd Cir. 1963), cert. den., 375 U. S. 946 (1963); *United Brotherhood of Carpenters and Joiners of America* v. *Brown,* 343 F. 2d 872 (10th Cir. 1965); *Green* v. *Local 705, Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO,* 220 F. Supp. 505 (D. C. E. D. Michigan 1963); *Grand Lodge* v. *King,* 335 F. 2d 340 (9th Cir. 1964), cert. den. 379 U. S. 920. The individual members of a labor organization are given protection with a view toward allowing those members to conduct local affairs with a minimum of outside interference, and the internal operations of unions are left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act. *United Brotherhood of Carpenters and Joiners of America* v. *Brown, supra; Gurton* v. *Arons,* 399 F. 2d 371 (2nd Cir. 1964). It is respectfully submitted that the Court below properly found that the petitioner, in attempting to take over the local meeting, posed a direct and immediate threat to the rights contained in the foregoing statutes.

The decision below is in complete conformity with the foregoing authorities and within the spirit, intent and purpose of the LMRDA. Certainly, there is no conflict between the various Circuits as to how the Rights provided for by Sections 101(A)(1) and (2) of the Act are to be interpreted, that question having been settled with finality when this Court held in *American Federation of Musicians* v. *Wittstein,* 379 U. S. 171, 182-183 (1964), that these rights are to protect and foster participation by the rank

and file in the affairs of the union. In this connection it will be noted that the Second Circuit in no way conflicted with its own opinion in *Yanity* v. *Benware,* 376 F. 2d 197 (2nd Cir. 1967). In *Yanity* the Court held that the right to meet and assemble is applicable to *participation* in meetings and not to the general right to hold meetings. *Participation* by members in their regular meetings is the heart of the case at bar and is what the lower Court concerned itself with (A. 15). Nor is there any question as to when our federal courts should intervene to protect these rights. That too has been passed upon by this Court in *Calhoon* v. *Harvey,* 379 U. S. 134 (1964). The decision below is sound and rests upon propositions of law which have emerged from this Court and from the various Circuit Courts within the brief period of time that the "Bill of Rights" has been a part of the body of federal labor law.

There is no important question of federal law presented by petitioner which has not been, but should be settled by this Court. True, the bulk of those cases decided under Sections 101(A)(1) and (2) of the Act have in the main dealt with voting rights, and our federal courts for the most part have not been presented with violations of the exact kind presented here. That fact alone does not create in this case a question of federal law which ought to be separately settled. The facts of this case are quite clear and not open to dispute. The only question in this case was as to the effect of petitioner's directive upon the rights of the members of Local 2, and on this question there again can there be no dispute.

The Court of Appeals properly found that the right of speech and assembly encompasses the right to meet under the supervision of the representatives chosen by the mem-

bers of the local for that purpose and that the aforementioned secured rights would be compromised if the local meeting is taken over by the International (A. 11).

By arbitrarily and without authority, "directing" the individual members of Local 2 that *they* would have *their meeting* run in a manner other than as provided in *their* own Constitution and By-Laws, without the benefit of *counsel of their own choosing,* the petitioner manifested a wanton disregard for the rights of the individual members. Indeed, if Section 101(A)(1) gives a right to attend membership meetings, such right must necessarily mean meetings which are to be held in accordance with the will of the membership as evidenced by their Constitution and By-Laws.

Each and every member of Local 2, by virtue of assuming membership in the union, has contracted that he would be governed by the Constitution and By-Laws of the union. *Cleveland Orchestra Committee* v. *Cleveland Federation of Musicians Local No. 4, American Federation of Musicians, AFL-CIO,* 303 F. 2d 229 (6th Cir. 1962). In like manner, the International is bound by its own Constitution. *Simmons* v. *Avisco, Local 713, Textile Workers Union,* 350 F. 2d 1012 (4th Cir. 1965); *United Nuclear Corp.* v. *NLRB,* 340 F. 2d 133 (1st Cir. 1965).

Can the rights contained in Sections 101(A)(1) and (2) to meet, assemble, and participate have meaning or substance if they do not include therein the right to meet with the benefit of legal advice, under the supervision of the representatives lawfully chosen for that purpose? In its holding, the Court of Appeals stated that "that is the cornerstone of Democratic rule—that the government is freely chosen by the governed. And the representatives.

the officers of Local 2, may not be shunted aside without gravely endangering the individual rights of the members" (A. 11). This is completely consistent with *United Brotherhood of Carpenters and Joiners of America* v. *Brown*, 343 F. 2d 872 (10th Cir. 1965); and *Gurton* v. *Arons*, 339 F. 2d 371 (2nd Cir. 1964) wherein it was held that protection is afforded under the LMRDA with a view toward allowing the members to conduct local matters with a minimum of outside interference, leaving the internal operations of the Union to the officials chosen by the members to manage those operations, except where otherwise expressly provided by the Act. Here petitioner sought clearly to disrupt a local meeting and to usurp the membership's prerogative of self-management by the officers chosen for that purpose.

Section 101(A)(1) guarantees the right to attend membership meetings, and to participate in the deliberations therein. Section 101(A)(2) secures the right to meet with other members, and protects free expression of views at such meetings. On its face the directive presented a plain threat to those rights. It was demonstrated to the Court below that under the Constitution and By-Laws involved (*supra*), only the International President was given the right to *attend* a local meeting. No right is given to any other international officer to attend a local meeting, much less preside thereat. By petitioner's directive he attempted to forceably place outsiders (not local union members), in the meeting chamber of the members of Local 2, and forced the members to meet with these persons. It is quite clear that freedom of assembly and of association were thus glaringly attacked.

Further, the right to free expression of views was surely jeopardized. The atmosphere which petitioner sought to create at the local meeting was one of absolute control and domination by the international. The lower Court, in discussing this freedom was of the opinion that "free discussion is impossible if the forum is under the control of superior force, with foreigners patrolling the meeting chamber and exercising the prerogatives of the Chair" (A. 16). Said conclusion is inescapable. A contrary holding would have stripped the statutory guarantees here at issue of all substance.

CONCLUSION

For the reasons set forth above it is respectfully submitted that the petition for a writ of certiorari be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1967

No. 1095

JOHN J. GANNON, Individually and as President of INDEPENDENT WATCHMEN'S ASSOCIATION,

Petitioner,

—against—

ENRIQUE NAVARRO, Individually and as President of LOCAL 2 of INTERNATIONAL UNION OF POLICE AND PROTECTION EMPLOYEES-INDEPENDENT WATCHMEN'S ASSOCIATION, and on Behalf of All Members Similarly Situated,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

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PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

Pursuant to Rule 58, this Petition for rehearing seeks rehearing of the March 18, 1968 denial of certiorari.

There is an intervening circumstance since filing the original petition which should be of controlling effect.

The adverse opinion of the Court of Appeals for the Second Circuit herein is based only on a letter dated February 9, 1967, from James J. McFaun, Secretary-Treasurer of the Independent Watchmen's Association, written at the direction of petitioner, the president of the I. W. A. to the members of its Local 2.

As appears by reference to the crucial letter itself (Exhibit 1 to Amended Complaint, 13a Appellants' Appendix, Court of Appeals) one of the matters petitioner wished aired at the Local meeting was the proposed change of welfare insurers, to which the International objected, from the Equitable Life Assurance Society to Hamilton Life Insurance Company.

Since the petition was filed herein, reports in the press (*New York Times,* Monday, March 4, 1968 and *The Wall Street Journal,* Monday March 4, 1968) indicate Hamilton Life Insurance Company appears to have become insolvent and proceedings for its liquidation have been instituted by New York State authorities.

For the convenience of the Court, photoprint copies of these two reports are bound in on the opposite page.

(Opposite) ☛

COURT TEST FACED BY HAMILTON LIFE

State Seeks to Take Over Ailing Insurance Company

By ROBERT D. HERSHEY Jr.

The Hamilton Life Insurance Company of New York was directed over the weekend to show cause in the State Supreme Court at Foley Square this morning why the Superintendent of Insurance should not take it over.

The insurance concern, founded in 1959, has been under study by the Insurance Department since a capital impairment was found in a special examination Nov. 22. Papers filed by Superintendent Richard E. Stewart on Friday showed Hamilton to be insolvent.

Policyholders are protected in full under the insurance law, which provides that all policies and annuity contracts written by Hamilton wolud be guaranteed by the Life Insurance Guaranty Corporation, "100 cents on the dollar," Mr. Stewart said.

Hamilton was enjoined Friday from writing any new insurance business. It will be required to show reasons why the injunction should not be made permanent.

Deficit Reported

A special report of Insurance Department examiners indicates that Hamilton's current liabilities exceed its assets by at least $800,000. According to the company's 1967 annual statement, it had a deficit of about $600,000.

A committee was assigned Feb. 7 to make a study of Hamilton operations and to report within 30 days.

"The new information contained in the Hamilton statement and the Insurance Department Examiners' report indicates a substantial deterioration in the financial condition of Hamilton since the date of the Department report presented to the Guaranty Corporation," the Insurance Department said.

It was understood that Albert Barnet became chairman of Hamilton on Thursday, replacing Harold B. Pomeranz. Efforts to reach either man for comment yesterday were unsuccessful.

Hamilton's shares, traded over the counter, closed Friday at 2 bid, 2½ asked. On Nov. 21, the price was 5¼ bid, 6 asked.

Hamilton Life Faces Seizure by New York, Which Calls Firm Insolvent; Officer Quits

By EDWARD P. FOLDESSY
Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—The New York State Insurance Department took court action Friday against troubled Hamilton Life Insurance Co. of New York.

The department obtained an order in a state court directing Hamilton to show cause today why it shouldn't be taken over by the insurance department. The order also temporarily enjoined Hamilton from writing any new insurance, and required the company to show cause why the injunction shouldn't be made permanent.

According to the court papers a special report by the department's examiners, dated this past Friday, showed Hamilton to be insolvent. It indicated that the insurer's current liabilities exceeded assets by "at least $800,000," based on 1967 results with certain adjustments made to March 1.

The department claimed the new information contained in the Hamilton statement and the special study indicated a "substantial deterioration" in the insurer's financial condition and that "immediate action" was necessary.

Chairman Quits

In other developments, it was learned that Harold B. Pomeranz, who was elected chairman of Hamilton last month, resigned Thursday. Albert Barnett, who was chosen as president and chief executive officer last month, was named to temporarily succeed Mr. Pomeranz.

Reached at home yesterday, Mr. Barnett declined comment on Mr. Pomeranz's resignation and refused to discuss the court action.

If the insurance department does receive permission to seize Hamilton it may take steps, at the direction of the court, to rehabilitate the insurer. Should such efforts prove futile, however, the department could apply to the court for Hamilton's liquidation.

The department's special study was conducted by the state Life Insurance Guaranty Corp. The Guaranty Corp. study was commissioned Feb. 7, after a special department examination, dated Nov. 22, showed Hamilton's surplus had fallen below prescribed legal limits.

Under New York law, the Guaranty Corp., which consists of New York legal life insurers, guarantees in full the payment of life insurance policies and other insurance obligations of insurers in the state.

The Guaranty Corp. study, it was indicated, would continue in order to develop further information that "may prove of assistance in the rehabilitation proceedings or in any other proceedings which may follow."

But whatever action is taken, the department stressed "all Hamilton policyholders and beneficiaries are fully protected (by the Guaranty Corp.), 100 cents on the dollar."

Hamilton's own 1967 report wasn't immediately available to the press. The Nov. 22 report of the department was at variance with the company's own figures. The department's examination showed that, as of May 31, Hamilton's liabilities exceeded assets by $674,047.22. At the time, Hamilton's own statement claimed its assets exceeded liabilities by $281,598.42. It was indicated the company has since made adjustments to correct most of the variances. According to the court papers, Hamilton's 1967 report showed liabilities exceeded assets by about $600,000.

An official of Hamilton has estimated that the company has about $415 million insurance in force, made up of $190 million of ordinary and $225 million of group insurance.

This may, at first blush, seem like a narrow factual matter not sufficient to sway the opinoin of this Court as to whether or not this case is of sufficient importance to justify the granting of *certiorari*. Reflection however, indicates that this bald fact is of the utmost importance.

As stated in the original petition herein:

> "The Court of Appeals holding is 'that the LMRDA secures the right of union members to meet without interference from the international union except where the parent organization acts in accordance with lawfully established procedures to institute a trusteeship over the local union.' This holding characterized by the Court of Appeals as 'an important question under the Labor Management Reporting and Disclosure Act', creates a situation where a parent body is prohibited from acting toward its locals except in the most drastic manner. Persuasion and orderly discussion are apparently outlawed if exercised by a parent union. On the other hand the parent is encouraged to take action to prevent almost completely the exercise of almost any local autonomy."

If the International Union chose to impose a trusteeship under its constitution on the ground that placement of union welfare funds with an insurer likely to become insolvent was in prospect, the Court of Appeals holding would not be an obstacle to such trusteeship. When however, the International was reasonably, as recent events have shown, apprehensive of contemplated conduct involving changing the vitally needed welfare insurance funds from a great mutual insurer of international reputation to a company whose solvency was in doubt, and wished to discuss this question in a free and

open meeting, not presided over by the local officials who were possibly pushing such a change for interests of their own, the International's action is branded as a violation of the members' rights.

In a word, the Court of Appeals would permit a Trusteeship and complete loss of local autonomy, but would not permit reasoned discussion, without coercion, of the problems which would justify such trusteeship when such discussion would prevent the necessity of trusteeship.

The LMRDA gives rights to union members—basic rights including rights to express any views, arguments, or opinions [29 U.S.C. 411 (a) (1)]. Should not International officials have the same right to express their opinions in letters openly distributed and subject to refutation in open meeting, presided over by International officers, with no interest in stifling discussion, but only interest in a free expression of the members views?

If the individual member of the union is to have the right of free speech on union affairs should not international officers interested in the Local's welfare, have the same right of free speech?

Dated: April 8, 1968

Respectfully submitted,

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Certificate of Counsel

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in paragraph 2 of Rule 58 of the Rules of this Court.

Dated: April 8, 1968.

WILFRED L. DAVIS